

## REMARKS/ARGUMENTS

### Status of the Claims

Claims 1-3, 7, 10-18, 29-32, 35, and 36 are pending in the present application. Claims 28, 34 and 37-39 have been canceled without prejudice to or disclaimer of the subject matter contained therein. Claims 1, 7, 29, 32, and 35 have been amended to recite an *Ostrinia nubilalis* insect receptor polypeptide having *Bt* toxin binding activity. Support for this amendment may be found throughout the specification, for example, on pages 33-38. No new matter has been added by amendment. Reexamination and reconsideration of the claims are respectfully requested.

The Examiner is respectfully requested to withdraw the rejection and allow claims 1-3, 7, 10-18, 29-32, 35, and 36. Pursuant to 37 C.F.R. § 1.116 and the *Manual of Patent Examining Procedure* (MPEP), any amendment that will place the application in condition for allowance may be entered after final rejection (MPEP § 714.12). Applicants believe that this amendment places claims 1-3, 7, 10-18, 29-32, 35, and 36 in condition for allowance.

### The Objection to the Claims Should be Withdrawn

Claims 30, 31, and 36 have been objected to on the grounds that they depend from a rejected base claim. It is respectfully submitted that the objection should be withdrawn in view of the fact that Applicants have demonstrated herein the patentability of base claims 1 and 7.

### The Rejection Under 35 U.S.C. § 112, First Paragraph, Should be Withdrawn

The Examiner has maintained the rejection of claims 1-3, 7, 10-18, 28, 29, 32, 34, 35, and 37-39 under 35 U.S.C. § 112, first paragraph, on the grounds that they lack a sufficient written description. The rejection is respectfully traversed. However, solely to advance prosecution, Applicants have amended claims 1, 7, 29, 32, and 35 to recite an *Ostrinia nubilalis* insect receptor polypeptide having *Bt* toxin binding activity, **as suggested by the Examiner to overcome this rejection**. As a result, Applicants believe that the present claims meet the requirements for written description under 35 U.S.C. § 112, first paragraph.

Appl. No.: 09/715,909  
Amdt. dated September 2, 2005  
Reply to Office action of July 15, 2005

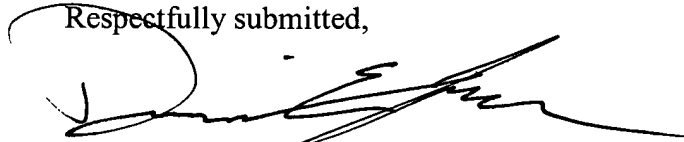
In view of the above remarks, all grounds for rejection under 35 U.S.C. § 112, first paragraph, have been overcome. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

### CONCLUSIONS

It is believed that the rejection has been obviated or overcome and the claims are in condition for allowance. Early notice to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

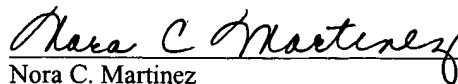


David E. Cash  
Registration No. 52,706

**Customer No. 29122**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Raleigh Office (919) 862-2200  
Fax Raleigh Office (919) 862-2260

#### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on September 2, 2005



Nora C. Martinez